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DAY PITNEY LLP
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NEW YORK, NY 10036-7311

EXAMINER

SIPOS, JOHN

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3721

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/822,369
Filing Date: April 12, 2004
Appellant(s): MCMAHON ET AL.

MAILED
JAN 25 2007
Group 3700

Ronald E. Brown
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed December 4, 2006 appealing from the Office action mailed June 28, 2006.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is substantially correct. The Grounds of Rejection should correctly read as follows:

Claims 34-46 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent Herber (5,519,982) in view of Gilbert (UK Patent Application 2,085,519) or alternatively over Gilbert in view of Herber.

Claim 34-46 provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 34-42 of copending Application No. 10/208494 in view of Herber(5,519,982). This double

Art Unit: 3721

patenting rejection need not be reviewed since Appellants will be submitting a terminal disclaimer to overcome the rejection.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,519,982	Herber	5-1996
2,085,519	Gilbert (United Kingdom)	10-1980

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 34-46 are rejected under **35 U.S.C. ' 103(a)** as being unpatentable over the patent Herber (5,519,982) in view of Gilbert (UK Patent Application 2,085,519) or alternatively over Gilbert in view of Herber.

The patent to Herber shows a method of manufacturing reclosable bags in Figures 8-26 comprising feeding a film web, folding the web longitudinally, feeding a reclosable zipper 208 into the fold, sealing the zipper to the opposing sides of the web adjacent the fold at 255, cross sealing the web and zipper to form bags with a bottom fold and an opposite open end, filling the bags through the open end at 305 and sealing the open mouth of the bags at 310. The placement of the zipper in the fold provides

protection to the zipper by the fold. The process set forth by Herber differs from the claimed process in that Herber does not use sliders on the zippers.

The Gilbert reference teaches a process for applying sliders to zippers comprising of feeding zippers comprising of profiles 2 and flanges 1, feeding spaced sliders 3 by feeding turret 9 having a plurality of slider holding recesses 10, applying the sliders at spaced locations on to the zippers. The slider-carrying fastener segments are then attached to a film web. This operation results in a faster and more efficient operation as discussed on page 1, lines 16-38 of Gilbert. The process set forth by Gilbert differs from the claimed process in that it does not discuss the bag forming process.

It would have been obvious to one skilled in the art to use zippers with sliders in the Herber process as taught by Gilbert, i.e. feed zippers carrying sliders into the folded web, to provide for a bag with an easy opening/closing mechanism.

Alternatively, it would have been obvious to one skilled in the art to complete the bag forming process of Gilbert by the process set forth in the Herber patent, i.e. folding the web, feeding the slider carrying zipper into the fold and sealing the zipper to the film's opposing walls.

In both of the above operations first portions of the zippers of Gilbert, i.e. flanges 1, would be sealed to the opposing walls of the film while a second portion, i.e. portions closer to the slider as well portions encompassed by the slider would be free of sealing to the opposing walls.

Regarding the claims reciting the line weakness (claims 35-37), Herber shows a line of weakness 254 in Figure 18 between the fold and the seals of the zipper and the film.

The simultaneous folding and weakness forming operation of claim 34 and the stomping of zippers of claim 46 are well known in the art and performing these steps in the Herber or Gilbert methods for their inherent advantages would have been obvious to one skilled in the art.

(10) Response to Argument

The only argument made by Appellants is that the prior art does not show the partial sealing of the zipper flanges to the package walls and that the flange of the Herber zipper is fully sealed to the film material.

As Appellants state in previous amendments as well as in the Appeal Brief, the partial sealing of the flanges to the wall "is required to make the claimed slider functional". The Examiner agrees and has repeatedly argued that in order for a slider to properly operate relative movement between the slider and the zipper/bag wall must be permitted. This can only be accomplished by partial sealing the zipper flanges to the film. The sealing of only some portions of the zipper to the film is a necessity in the slider carrying zippers regardless of the type of zipper or slider since the sliders need to move relative to the zipper and film.

The rejection of the claims is based on the modification of the Herber or Gilbert operations.

The patent to Herber teaches the identical process of forming bags with zippers as recited in the claims. The only difference is that the zippers lack a slider and therefore the zippers are fully sealed to the bag walls. As shown in Figures 8-26 the process comprises the feeding of a film web, folding the web longitudinally, feeding a reclosable zipper 208 into the fold, sealing the zipper to the opposing sides of the web adjacent the fold at 255, cross sealing the web and zipper to form bags with a bottom fold and an opposite open end, filling the bags through the open end at 305 and sealing the open mouth of the bags at 310. The placement of the zipper in the fold provides protection to the zipper by the fold.

The reference to Gilbert teaches a process for applying sliders to zippers prior to the bag manufacturing process. It comprises of feeding zippers having profiles 2 and flanges 1, feeding spaced sliders 3 by feeding turret 9 and applying the sliders at spaced locations on to the zippers. The slider-carrying fastener segments are then attached to a film web. This operation results in a faster and more efficient operation as discussed on page 1, lines 16-38 of Gilbert. The process set forth by Gilbert differs from the claimed process in that it does not discuss the bag forming process.

As was stated in the Final Rejection, it would have been obvious to one skilled in the art to use zippers with sliders in the Herber process as taught by Gilbert, i.e. feed zippers carrying sliders into the folded web, to provide for a bag with an easy opening/closing mechanism.

Alternatively, it would have been obvious to one skilled in the art to complete the bag forming process of Gilbert by the process set forth in the Herber patent, i.e. folding

Art Unit: 3721

the web, feeding the slider carrying zipper into the fold, sealing the zipper to the film's opposing walls and cross sealing the folded web walls.

Although Gilbert does not specifically disclose the manner of sealing the zipper to the film since this occurs in a subsequent operation, by necessity it could only be partially sealed to the bag film to permit the movement of the slider relative to the zipper/film, as argued by both Appellants and the Examiner. Therefore, the sealing of the Gilbert zipper would have to take place by only partially sealing the flanges 1 to the film while leaving other portions adjacent the slider free of sealing to the film. If the zipper of Gilbert was fully sealed to the film, the slider and zipper of Gilbert would be inoperative.

In both of the above modifications first portions of the zippers of Gilbert, i.e. flanges 1, would be sealed to the opposing walls of the film while a second portion, i.e. portions closer to the slider as well as portions encompassed by the slider would be free of sealing to the opposing walls.

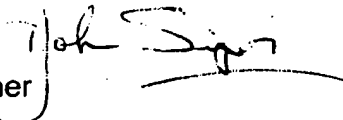
(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

John Sipos
Primary Examiner
Art Unit 3721



Conferees:

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